

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

11 **THOMAS ROSENBURG *et al.*, on behalf of**
12 **themselves and classes of those similarly**
13 **situated,**

14 **Plaintiffs,**

15 **v.**

16 **INTERNATIONAL BUSINESS**
17 **MACHINES CORPORATION,**

18 **Defendant.**

19 **Case No. CV 06-00430 PJH**

20 **STIPULATION AND [PROPOSED]**
21 **ORDER EXTENDING TOLLING OF**
22 **STATUTES OF LIMITATIONS AND**
23 **AMENDING CASE SCHEDULE**

24 This Stipulation is entered into by and between Thomas Roseburg, James Baxter, Sherry
25 Mattson, Steve Park, Fnu Kennedy, and Exaldo Topacio ("Plaintiffs"), by and through their
26 undersigned counsel, and International Business Machines Corporation ("IBM" or the
27 "Company"), by and through its undersigned counsel. Plaintiffs and the Company are
28 collectively referred to herein as the "Parties."

29 **RECITALS**

30 WHEREAS, the Parties met with mediators on Wednesday, September 13, 2006, and on
31 Thursday, October 19, 2006, in an attempt to resolve this litigation;

1 WHEREAS, the Parties continue to be actively engaged in settlement-related discussions
2 and would like to focus their efforts on this process for the next 30 days;

3 WHEREAS, for the reasons set forth above, good cause exists to postpone (1) the filing of
4 Plaintiffs' motion for Hoffmann notice, motion to amend the Complaint, and Rule 23 motion for
5 class certification; (2) IBM's motion(s) for summary judgment; and (3) the January 10, 2007
6 hearing date for such motions;

7 WHEREAS, the only other modifications of time that the Parties have sought were a
8 thirty-day stipulated extension of the deadline for IBM to respond to the Complaint, two
9 stipulated continuances of the Case Management Conference, and a stipulated extension of the
10 deadlines for Plaintiffs' Hoffmann motion and IBM's motion for summary judgment from
11 October 13, 2006, to respectively, November 21, 2006 and November 22, 2006;

12 WHEREAS, no other dates are affected by these changes;

13 WHEREAS, only to the extent specified below, this Stipulation and Order modifies (1)
14 the Stipulation and Order Regarding Case Schedule, Tolling of FLSA Statute of Limitations, and
15 Potential Collective Action Member Contact Information entered on June 7, 2006; (2) the Civil
16 Minutes order entered on August 17, 2006; and (3) the Stipulation and Order Extending Tolling
17 of FLSA Statute of Limitations, Tolling Statutes of Limitations for Certain State Law Claims, and
18 Extending Schedule for Filing Certain Motions entered on October 5, 2006, all three of which
19 shall otherwise continue in full force and effect;

20 THEREFORE, the Parties stipulate and agree as follows:

21 **STIPULATION AND AGREEMENT**

22 1. The deadlines for the filing of Plaintiffs' Hoffmann motion for conditional
23 certification of the prospective FLSA collective action for purpose of issuance of Court-facilitated
24 notice, Plaintiffs' motion to amend the Complaint, and Plaintiffs' motion for class certification
25 under F.R.C.P. 23, as well as the deadline for IBM's filing of any early motion for summary

1 judgment (as specified in the Civil Minutes Order of August 17, 2006), are vacated. The
 2 January 10, 2007 hearing date for such motions is also vacated. The parties shall not file any
 3 such motions before November 30, 2006, although the Parties agree and the Court hereby rules
 4 that Plaintiffs may amend their complaint on or before November 22, 2006. Any further
 5 amendments of Plaintiffs' complaint will require a motion or further agreement of the Parties.

6 2. This matter is hereby set for a status conference on November 30, 2006 at
 7 2:30 p.m., to discuss further case scheduling.

8 3. The statute of limitations under the FLSA applicable to (a) the Plaintiffs;
 9 (b) employees in bands 6-8 of the 499A Position; (c) employees in bands 6-8 of the 498Q, 498R,
 10 498S, 498T, and 498U Positions; (d) employees in the 5343 and 5338 Positions; and
 11 (e) employees in bands 6-8 of the 594J Position shall be tolled from April 19, 2006 through
 12 November 30, 2006.

13 4. The statute of limitations under the wage and hour laws of the states of
 14 Connecticut, Kentucky, Maryland, Massachusetts, North Carolina, Ohio, Pennsylvania,
 15 Washington, and Wisconsin applicable to the individuals set forth in paragraph 3 shall be tolled
 16 from October 2, 2006 through November 30, 2006.

17 5. This Stipulation and Order is without prejudice to Plaintiffs moving the
 18 Court, pursuant to the doctrine of equitable tolling, to toll the FLSA statute of limitations for
 19 periods before April 19, 2006 or after November 30, 2006. The Company reserves the right to
 20 oppose any such motion. This Stipulation and Order is also without prejudice to the Parties'
 21 reaching agreement about additional tolling.

22 6. This Stipulation and Order will not have the effect of reviving (1) any
 23 FLSA claims that were time-barred as of April 19, 2006 or (2) any claims under the wage and
 24 hour laws of the states specified in paragraph 4 that were time-barred as of October 2, 2006.

25 7. Except as expressly set forth herein, nothing contained in this Stipulation
 26 and Order shall constitute a waiver of Plaintiffs' or the Company's legal positions, rights or
 27 remedies, including any defense under any statute of limitations or any other defense relating to
 28 the passage of time.

1 8. This Stipulation and Order shall not be admissible for any purpose
2 whatsoever, other than for the purpose of enforcing the terms hereof, in any proceeding between
3 the Company and any Plaintiff(s) and/or other individuals for whom a statute of limitations is
4 tolled pursuant to this Stipulation and Order.

5 9. This Stipulation and Order is not intended as, and shall not be construed to
6 be, an admission by any Party that any other Party has or does not have a valid claim or defense.

7 10. This Stipulation and Order shall not become effective until approved and
8 entered by the Court.

9 || Dated: November 8, 2006

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27 *Attorneys for Plaintiffs and the proposed
28 Plaintiff Classes*

ORDER

The foregoing Stipulation is approved, and IT IS SO ORDERED.

11/15/06



1 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
2 "conformed" signature (/s/) within this e-filed document.

3 Dated: November 8, 2006

4 /S/ Donna M. Mezias

5 Donna M. Mezias

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